

INCOMING TELEGRAM

Department of State

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Action
EUROFFICE
OF THE SECRETARY
SECRETControl: 12916
Rec'd: April 20, 1959
6:56 p.m.Info
RMR

FROM: London

TO: Secretary of State

SS

NO: 5480, April 20, 9 p.m., (SECTION ONE OF TWO)

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SENT DEPARTMENT 5480, REPEATED INFORMATION BONN 385, MOSCOW 246,
PARIS 868, BERLIN 141.

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FROM HILLENBRAND

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DEPARTMENT PASS DEFENSE

PARIS PASS USRO

Explanatory material preceding recommendation section of paper on Berlin has been agreed for most part. First seven paragraphs which discuss 1) Western views; 2) Western position; 3) Soviet position; 4) Soviet arguments; 5) Western counterarguments; 6) Soviet proposals and 7) working group conclusions are satisfactory from US view and conform to previous US position.

Only substantial innovation has resulted from French insistence upon mention REBUS SIC STANTIBUS Doctrine which was supported by Germans. French consider that this was sole argument Soviets could advance which possessed any legal merit whatsoever. Pertinent extracts are:

"Soviet Arguments:...The first argument is that any arrangement based on rights and obligations assumed in 1945, and in totally different circumstances to those now existing, must be regarded as being prima facie out-of-date and therefore needing modification to compare with present conditions..."

"Western Counter Arguments: The answer to the first argument is that however outdated the present situation in Berlin may appear to be to the Soviet Government, the three Western powers are fully entitled to insist that the rights and obligations assumed in 1945 remain

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By A/NARA, Date 1-8-70

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Action -2-5480, April 20, 9 p.m., (SECTION 1 OF 2), from London
EUR CORRECTED PAGE 2 AND 2½.

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remain valid so long as the status of Berlin has not been modified by an agreement between the Four Powers. The principle of REBUS SIC STANTIBUS has never been recognized as an unconditionally valid principle of international law and moreover, it was abundantly clear in 1945 that the final settlement would not be made until a unified German state has been reconstituted. The fact that the status of Berlin has not yet been settled is not the fault of the Western powers but of the Soviet Government which has blocked all attempts to restore Berlin to its rightful status as the capital of a reunified Germany..."

While foregoing obviously incomplete exposition problem, we believe it sets forth sufficient elements of Western position on point to serve purposes this paper.

Paragraph 7, Conclusions, is as follows:

"The working group has concluded that the present basis of our right to be in Berlin ought to be maintained partly because that right is unqualified and partly because the Soviet Government might subsequently denounce or modify any new quadripartite agreement on the grounds either that circumstances had changed or that it was not being properly observed by the Western powers. It would appear desirable, however, in our public announcements, to emphasize the trustee nature of our presence in Berlin and our obligations to protect the freedom of the population of West Berlin. This does not mean, however, that the Western powers need necessarily refuse to discuss supplementing the agreements which define how their rights and obligations should be exercised. Indeed there might be advantage in negotiating more precise agreements since the existing agreements are vague in many respects, especially as regards the movements of civil persons and goods. Moreover to offer to renegotiate these agreements would counter the Soviet arguments referred to above. The principles upon which are founded the access agreements should not, however, be the subject of negotiation since this would jeopardize the whole basis of our position as regards the German problem."

Ultimate sentence which strikes monitory note included at French insistence.

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-2½-5480, April 20, 9 p.m., (SECTION 1 OF 2), from London
CORRECTED PAGE 2 AND 2½.

1959 APR 21 PM
Paragraph 8, United Nations, straddles problems discussed
in following message.

DEPARTMENT OF STATE

WHITNEY

BB:RV/8

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By	BG
NARA, Date 1/11/90	

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Department of State

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FROM: LONDON

TO: Secretary of State

NO: 5480, APRIL 20, 9 PM (SECTION TWO OF TWO)

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SENT DEPARTMENT 5480; REPEATED INFORMATION BONN 385, MOSCOW 246, PARIS 868, BERLIN 141.

PARAS 9 AND 10 DISCUSS POSITION OF BERLIN IN "PHASED PLAN." FOLLOWING TEXT SETS FORTH POSITION MAINTAINED BY BRITISH AND FRENCH:

"9. THE WORKING GROUP CONSIDERS THAT LOGICALLY SOME REFERENCE TO BERLIN MUST BE INCLUDED IN THE "PHASED PLAN." ON THE OTHER HAND, THERE IS SOME DANGER THAT IF THE "PHASED PLAN" IS REJECTED AS A WHOLE AND AN INTERIM BERLIN SOLUTION HAS TO BE NEGOTIATED SEPARATELY, THE SOVIET GOVERNMENT MAY CONCLUDE THAT IT CAN EXTRACT OTHER ITEMS FROM THE "PACKAGE" FOR SEPARATE CONSIDERATION. IT THEREFORE SEEMS DESIRABLE THAT THE REFERENCE TO BERLIN IN THE "PHASED PLAN" SHOULD BE AS LOOSE AS POSSIBLE.

"10. THE POSSIBILITY OF INCLUDING A "POSITIVE PROPOSAL RELATING TO BERLIN IN THE PLAN HAS ALSO BEEN CONSIDERED. ON THE ONE HAND IT SEEMED DESIRABLE FROM THE POINT OF VIEW OF PUBLIC OPINION TO APPEAR TO BE FORTHCOMING. ON THE OTHER HAND THE NATURE OF THE "PHASED PLAN," I.E. THE ACHIEVEMENT OF GERMAN REUNIFICATION WITHIN ABOUT TWO AND A HALF YEARS MADE IT SEEM POINTLESS TO PROPOSE ANY ALTERATION OF THE EXISTING ARRANGEMENTS. AS NO REASONABLY ATTRACTIVE YET SAFE "PROPOSAL" WAS TABLED FOLLOWING ALTERNATIVE DRAFT:

"THE WORKING

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NARA, Date 1-8-76

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-2- 5480, APRIL 20, 9 PM (SECTION TWO OF TWO), FROM LONDON

"THE WORKING GROUP CONSIDERS THAT THE SPECIFIC PROPOSAL CONTAINED IN RECOMMENDATION ONE (TO BECOME EFFECTIVE AT AN APPROPRIATE POINT DURING THE SECOND STAGE OF OUR PLAN ON REUNIFICATION AND SECURITY) ON BERLIN SHOULD BE PRESENTED AT THE SAME TIME AS THE PROPOSALS FOR A GENERAL SETTLEMENT OF THE GERMAN PROBLEM. THERE IS SOME DANGER, HOWEVER, THAT IF THE "PHASED PLAN" IS REJECTED, AS A WHOLE AND AN INTERIM BERLIN SOLUTION HAS TO BE NEGOTIATED SEPARATELY, THE SOVIET GOVERNMENT MAY CONCLUDE THAT IT CAN EXTRACT OTHER ITEMS FROM THE "PACKAGE" FOR SEPARATE CONSIDERATION. MOREOVER, THE NATURE OF THE "PHASED PLAN," I.E., THE ACHIEVEMENT OF GERMAN UNIFICATION WITHIN TWO AND A HALF YEARS MIGHT MAKE IT APPEAR UNNECESSARY TO PROPOSE ANY ALTERATION OF THE EXISTING ARRANGEMENTS.

"11. ON THE OTHER HAND THE PROPOSAL CONTAINED IN RECOMMENDATION ONE WOULD STRIKE WESTERN OPINION AS HAVING BEEN SUFFICIENTLY NEGOTIABLE, TO PLACE THE ONUS FOR ANY SUBSEQUENT FAILURE TO RESOLVE THE CRISIS PEACEFULLY ON THE USSR, RATHER THAN THE WESTERN POWERS. IF ACCEPTED, IT WOULD CREATE A SITUATION REGARDING BERLIN WHICH WOULD BE AT LEAST AS FAVORABLE TO WESTERN POWERS AS THAT NOW EXISTING. MOREOVER, THE PRINCIPAL SOVIET TARGET IS BERLIN AND ITS ANNOUNCED PURPOSE IS TO ALTER THE STATUS QUO AND THE WESTERN POWERS ARE COMMITTED TO DISCUSS THE SUBJECT OF BERLIN. THIS BEING THE CASE, THE WESTERN PROPOSALS SHOULD PRESENT A SHARP CONTRAST TO THE SOVIET "FREE CITY WEST BERLIN" PROPOSAL BY DEMONSTRATING OUR CONCEPT OF THE WAY THE STATUS QUO IN BERLIN COULD BE ALTERED IN HARMONY WITH THE FOUR POWER RESPONSIBILITY FOR ALL GERMANY.

A MORE LIMITED PROPOSAL OF A GENERALIZED CHARACTER WOULD MAKE THE WHOLE PACKAGE APPEAR AS PURELY A DEFENSIVE MANEUVER ON OUR PART."

BRITISH-FRENCH

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-3- 5480, APRIL 20, 9 PM (SECTION TWO OF TWO), FROM LONDON

BRITISH-FRENCH POSITION STEMS FROM REASONS INDICATED
EMBTel 5396. BASIC OPPOSITION APPEARS DERIVED FROM BELIEF
THAT US PROPOSAL IS NON-NEGOTIABLE TO EXTENT THAT IT WOULD
CAST DOUBT UPON VALIDITY ENTIRE PHASED PLAN. APPEARS UNLIKELY
CONFLICT WILL BE RESOLVED BY WORKING GROUP.

• WHITNEY

AM/21

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